

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 18, 2019 appellant, then a 48-year-old city letter carrier, filed a traumatic claim injury (Form CA-1) alleging that on December 10, 2019 she felt a sharp pain in her left leg when she grabbed a tub of mail and climbed out of her mail truck while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In support of her claim, appellant submitted a note dated December 18, 2019 from Sheri Leigh Payne Tignor, a nurse practitioner. Ms. Tignor stated that appellant was seen in the office and could not return to work.

In a development letter dated January 6, 2020, OWCP advised appellant of the type of factual and medical evidence needed and provided her with a questionnaire. It afforded her 30 days to submit the necessary evidence.

In a January 12, 2020 response, appellant stated that she was injured on December 10, 2019 and had called and texted her supervisor to advise her that she was in pain. She enclosed a copy of the text message she sent to her supervisor on the alleged date of injury.

By decision dated February 7, 2020, OWCP found that appellant had established that the December 10, 2019 employment incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish a diagnosis causally related to the accepted incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received a letter dated March 10, 2020 from Dr. John Verheul, a Board-certified family practitioner who recounted that on December 10, 2019 appellant stepped out of her mail truck and experienced pain in her back and difficulty straightening her left leg. Dr. Verheul initially diagnosed acute sciatica, but later diagnosed piriformis syndrome, which was a peripheral neuritis of the sciatic nerve caused by an abnormal condition of the piriformis muscle. He further related that "it usually occurs as a result of precipitating cause, including macro trauma, ischemic mass effect, and local ischemia." Dr. Verheul concluded that it was within a reasonable degree of medical certainty that this diagnosis was caused by the December 10, 2019 incident.

On June 8, 2020 appellant, through counsel, requested reconsideration.

By decision dated June 17, 2020, OWCP modified its February 7, 2020 decision, finding that the medical evidence of record established a diagnosed medical condition. However, the claim remained denied as the medical evidence of record was insufficient to establish that the diagnosed condition was causally related to the accepted employment incident.

On July 14, 2020 appellant, through counsel, requested reconsideration of OWCP's June 17, 2020 decision. Counsel argued that appellant's condition had been "diagnosed by symptomology, identification of a precipitating event (the macro trauma on December 10, 2019) and the subsequent micro traumas as both a cause and aggravation of her condition."

In support thereof, appellant submitted a letter dated June 30, 2020, wherein Dr. Verheul explained that piriformis syndrome is caused by an abnormal condition of the piriformis muscle and usually occurs as a result of a precipitating cause including macro trauma and micro trauma. He stated that the December 10, 2019 injury did appear to be the cause of the diagnosed condition. Dr. Verheul also stated that appellant's continued postal duties included the overuse of the piriformis muscle and aggravated her condition. He stated that he was certain to a reasonable degree of medical certainty that both the macro trauma of the December 10, 2019 incident, and appellant's continued micro trauma from her postal duties caused and/or aggravated her medical condition.

By decision dated September 29, 2020, OWCP denied modification of its June 17, 2020 decision.

On November 9, 2020 appellant through counsel requested reconsideration of OWCP's September 29, 2020 decision. He reiterated his opinion regarding the cause of her condition, noting that the macro trauma of December 10, 2019 was identified as a precipitating event.

In support thereof, appellant submitted a letter dated November 5, 2020, wherein Dr. Verheul stated that the piriformis muscle helps the hip rotate and turn the leg and foot outwards and, as a result of overuse, injury, or strain, the muscle can tighten, swell, or spasm. He explained that by reaching over her body to grab her mail bucket and stepping out of her truck on December 10, 2019 the symptoms of piriformis syndrome manifested themselves, based upon her immediate symptomology and disability. Dr. Verheul explained that this diagnosis had precipitating causes including macro trauma, micro trauma, ischemic mass effect, and local ischemia also stated that the condition has a long physiological process that should not be limited to one event, although in this case the one event manifested the condition.

By decision dated February 1, 2021, OWCP denied modification.

On February 24, 2021 appellant, through counsel, requested reconsideration of OWCP's February 1, 2021 decision. Counsel argued that OWCP failed to use the requisite legal standard for appellant's claim and that OWCP had failed to consider this causation standard in evaluating appellant's claim. He also alleged that OWCP improperly denied the claim stating that it was filed on the incorrect form, and that OWCP did not properly provide *de novo* review.

By decision dated March 18, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In appellant's timely request for reconsideration, counsel contended that OWCP failed to properly apply OWCP's standards for establishment of casual relationship. Specifically, he argued that there are four types of causation under FECA law and that her accepted December 10, 2019 employment incident precipitated her piriformis syndrome. The underlying issue on reconsideration is whether or not the accepted December 10, 2019 employment incident caused appellant's diagnosed piriformis syndrome. The Board finds that counsel's argument is duplicative of his previous arguments made in his July 14 and November 9, 2020 requests for reconsideration, and made by Dr. Verheul in his March 10, June 30, and November 5, 2020 reports. The Board finds that this argument made by counsel on reconsideration, as well as his

⁴ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

argument that OWCP improperly denied appellant's claim as it was filed on an incorrect form, were cumulative, duplicative, or repetitive in nature and was insufficient to warrant reopening the claim for merit review.⁹ Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁰

Furthermore, the Board finds that appellant submitted no pertinent and new evidence in support of her request for reconsideration.¹¹ Thus, she is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).¹²

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

⁹ *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

¹¹ *See F.D.*, Docket No. 19-0890 (issued November 8, 2019).

¹² *T.M.*, Docket No. 19-0535 (issued July 25, 2019).

¹³ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board